UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

XIANG RONG LIN,

Plaintiff,

- against -

ROCKAWAY YUMMY LLC. d/b/a NEW YUMMY EXPRESS, MING JIE LU, LU MIN XUN a/k/a "MIN XUN LU", QIAO MEI JIANG, QING YONG LU, "JOHN DOE" and "JANE DOE" #1-10

Defendants.

Case No. 1:14-cv-4691(JBW)(CLP)

JOINT PRETRIAL ORDER

i. TRIAL COUNSEL

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ii. JURISDICTION

This Court has original jurisdiction over this action pursuant to 29 U.S.C. § 201, et seq. and 28 U.S.C. § 1331. This Court has supplemental jurisdiction over the State Law claims pursuant to 28 U.S.C. § 1367 since it is so related to the FLSA claim that it forms part of the same case or controversy.

Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this district, and pursuant to 28 U.S.C. § 1391(c) because Defendants are subject to personal jurisdiction in the State of New York.

iii. PLAINTIFF'S CLAIMS

This is a wage and hour action pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, et seq. ("FLSA"), New York Labor Law § 190, et seq. ("NYLL"), and applicable regulations. Plaintiff worked as a delivery man at Defendants' Restaurant. He alleges that he did not receive overtime compensation of one and a half times his regular rate for all hour worked in excess of 40 hours per week. Plaintiff further alleges that he did not receive spread of hours pay for workdays that exceed ten hours, and for wage notice violations pursuant to NYLL.

The Plaintiff brings the following causes of action against Defendants:

- Fair Labor Standards Act
    - Failure to pay overtime for all hours worked in excess of forty hours per week (29 U.S.C. § 207(a)(1)).
    - Failure to make, keep and preserve records with respect to Plaintiff sufficient to determine the wages, hours, and other conditions and practices of employment in violation of the FLSA, 29 U.S.C. § 255(a).

- New York Labor law
    - Failure to pay statutory overtime premiums for all hours worked in excess of forty hours per week. NYLL § 190, et seq.
    - Failure to pay spread-of-hours pay for equal to one hour's pay at the basic minimum hourly rate for each day worked in excess of ten (10) hours. NYLL Article 19, §§650, et seq.; 12 N.Y.C.R.R. § 146-1.6.
    - Failure to keep records of hours worked by Plaintiff. (Conn. Gen. Stat. § 31-66).
    - Failure to furnish Plaintiff with notice of his rate of pay and basis thereof in violation of the New York Wage Theft Prevention Act. NYLL § 195(1).

- Failure to Reimburse Expenses Relating to Tools of the Trade
    - Failure to reimburse Plaintiff for $450 per month expended on gas, oil changes, car maintenance and repairs necessary for making deliveries.

- Relief Sought
    - Declaratory Judgment that the practices complained of herein are unlawful under the FLSA and the NYLL.
    - An award of overtime compensation due under the FLSA and the NYLL.
    - An award of liquidated and/or punitive damages as a result of the

Defendants' willful failure to pay for overtime compensation pursuant to FLSA and NYLL.
- An award of liquidated damages as a result of Defendants' failure to furnish the appropriate notice pursuant to the NYLL.
- An award of prejudgment and post-judgment interest.
- An award of compensatory damages for unreimbursed expenses in relation to tools of the trade used by Plaintiff.
- An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and
- Such other and further relief as this Court deems just and proper.

DEFENDANT'S DEFENSES

Defendant's Statements:

The case does not fall into FLSA coverage because there is no evidence the defendant had revenues of $500,000 and plaintiffs willfully ignored it.

The plaintiff was compensated on the basis of a fixed monthly salary for all work. There was no overtime. Also, the plaintiff's calculation of damages include hours not worked by plaintiff.

iv. DAMAGES

Overtime Wage Damages

Plaintiffs maintain that Defendants are liable for unpaid overtime wages as follows:

Xiang Rong Lin: $128,086.44

The damages are calculated by determining the pay that Plaintiff would have received each week if he were paid appropriate minimum wages as well as an appropriate overtime wage for all hours worked in excess of 40 per week. We have subtracted the amount Plaintiff was actually paid each week from the amount that he should have been paid.

Spread of Hours Damages

Plaintiffs maintain the Defendants are liable for "Spread" of hours damages as follows:

Xiang Rong Lin: $6,918

The damages are calculated by determining the days that Plaintiff worked in an interval that exceeded ten hours, and multiplying that sum by one hour of the applicable minimum wage rate. This is subject to 100% liquidated damages under New York Labor Law.

Liquidated Damages & Pre-Judgment Interest on Overtime and Minimum Wage Damages

Plaintiffs maintain the Defendants are liable for liquidated damages and pre-judgment interest as follows:

Xiang Rong Lin: $128,086.44

New York Liquidated damages are calculated by multiplying the weekly unpaid wages by 100% for all dates after April 9, 2011. Federal Liquidated damages are calculated by multiplying the weekly unpaid wages by 100% for all dates within 3 years of this action.

Violation of New York Annual Wage Notice Law

Plaintiff maintains Defendants are liable as follows:

Xiang Rong Lin: $2,500

The damages are calculated by multiplying the number of weeks the violation persisted by $50, up to a maximum of $2,500.

Violation of New York Annual Wage Statement Law

Plaintiff maintains Defendants are liable as follows:

Xiang Rong Lin: $2,500

The damages are calculated by multiplying the number of weeks the violation persisted by $100, up to a maximum of $2,500.

Unreimbursed expenses

Xiang Rong Lin: $8,100

The damages are calculated by multiplying the amount that Plaintiff spent on gas unreimbursed each month, by the number of months that he worked for Defendants.

v. JURY/NON-JURY

This case is to be tried by a jury. The parties have not consented to a magistrate judge.

vii. STIPULATED FINDINGS OF FACT

- Plaintiff was an employee of Rockaway Yummy LLC.

viii. LIST OF WITNESSES

The Plaintiff intends to call the following witnesses at trial:

(1) Xiang Rong Lin
(c/o) 136-10 39th Avenue, Suite 1003
Flushing, New York 11354

Anticipated Testimony: Plaintiff will testify as to all claims set forth in his Complaint.

(2) Qiao Mei Jiang
71-11 Calamus Avenue
Woodside, New York 11377

Anticipated Testimony: Plaintiff anticipates to examine Qiao Mei Jiang's management role at Rockaway Yummy, LLC as well as her level of direct supervision over Plaintiff while he was employed by Defendants. Plaintiff also will examine Corporate Defendant's payroll practices, as well as record keeping practices, and specifically the number of hours worked by Plaintiff while employed by Defendants, as well as the wages paid to him.
Defendant anticipates to call her regarding the plaintiff's compensation arrangement.

(3) Ming Jie Lu

Anticipated Testimony: Plaintiff anticipates to examine Defendant Lu's management role at Rockaway Yummy, LLC as well as his level of direct supervision over Plaintiff while he was employed by Defendants. Plaintiff also will examine Corporate Defendant's payroll practices, as well as record keeping practices, and specifically the number of hours worked by Plaintiff while employed by Defendants, as well as the wages paid to him.

(4) Lu Min Xun

Anticipated Testimony: Plaintiff anticipates to examine Defendant Xun's management role at Rockaway Yummy, LLC as well as his level of direct supervision over Plaintiff while he was employed by Defendants. Plaintiff also will examine Corporate Defendant's payroll practices, as well as record keeping practices, and specifically the number of hours worked by Plaintiff while employed by Defendants, as well as the wages paid to him.

(5) Qing Yong Lu

Anticipated Testimony: Plaintiff anticipates to examine Defendant Qing Yong Lu's management role at Rockaway Yummy, LLC as well as his level of direct supervision over Plaintiff while he was employed by Defendants. Plaintiff also will examine Corporate Defendant's payroll practices, as well as record keeping practices, and specifically the number of hours worked by Plaintiff while employed by Defendants, as well as the wages paid to him.

The Defendants intend to call the following witnesses at trial:

(6) Defendant Ming Jie Lu

(7) Frank Como.

Anticipated Testimony: He is the owner of a neighboring pizza shop and had daily observations of the plaintiff during his alleged work hours.

ix. EXHIBITS

Exhibit 1: Plaintiff's Complaint and Jury Demand.

Exhibit 2: Defendants' Answer.

Exhibit 3: Deposition testimony of Qiao Mei Jiang.

Exhibit 4: Deposition testimony of Frank Como.

Exhibit 5: NYS Department of State Entity Information for Rockaway Yummy LLC.

Exhibit 6: Corporate Defendant's Lease Agreeement.

Exhibit 7: Corporate Defendant's Flyer.

Exhibit 8: Defendants' Responses to Plaintiff's Interrogatories.

Exhibit 9: Receipts of Plaintiff's unreimbursed expenses.

Exhibit 10: Plaintiff's damages calculations.

Dated: New York, New York
June 20, 2016

HANG & ASSOCIATES, PLLC

By: */s/ Jian Hang*

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